

# HOUSE BILL REPORT

## ESHB 2338

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### As Amended by the Senate

**Title:** An act relating to the administration and operations of growth management hearings boards.

**Brief Description:** Concerning the administration and operations of growth management hearings boards.

**Sponsors:** House Committee on Ways & Means (originally sponsored by Representative Hunt).

#### Brief History:

##### Committee Activity:

Ways & Means: 4/14/09, 4/18/09 [DPS].

##### Floor Activity

Passed House: 4/20/09, 79-19.

Senate Amended.

Passed Senate: 4/23/09, 42-4.

#### Brief Summary of Engrossed Substitute Bill

- Establishes the Office of Growth Management Hearings Boards (OGMHB) as an office consisting of the three regional Growth Management Hearings Boards (GMHBs).
- Establishes provisions for the transfer of operations, assets, employees, and obligations from the three GMHBs to the OGMHB.
- Authorizes members of a GMHB to select a member from a different GMHB to substitute for an unavailable member and render a case decision.
- Requires, subject to specific funding, the Joint Legislative Audit and Review Committee to examine the administration and operations of GMHBs or any successor agency.

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#### HOUSE COMMITTEE ON WAYS & MEANS

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 22 members: Representatives Linville, Chair; Ericks, Vice Chair; Alexander, Ranking Minority Member; Bailey, Assistant Ranking Minority Member; Dammeier,

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

Assistant Ranking Minority Member; Chandler, Cody, Conway, Darneille, Haigh, Hinkle, Hunt, Hunter, Kagi, Kenney, Kessler, Pettigrew, Priest, Ross, Schmick, Seaquist and Sullivan.

**Staff:** Owen Rowe (786-7391)

**Background:**

Growth Management Act/Growth Management Hearings Boards.

The Growth Management Act (GMA or Act) is the comprehensive land use planning framework for county and city governments in Washington. Enacted in 1990 and 1991, the GMA establishes numerous requirements for local governments obligated by mandate or choice to fully plan under the Act and a reduced number of directives for all other counties and cities.

The GMA establishes three regional Growth Management Hearings Boards (GMHBs): an Eastern Washington board, a Central Puget Sound board, and a Western Washington board. Each GMHB consists of three full-time members qualified by experience or training who also meet residency requirements. Compositional provisions for GMHBs require at least one member to be admitted to practice law in Washington and at least one member to have been a city or county elected official. Additionally, no more than two members of a GMHB may be from the same political party. The GMHB members are appointed by the Governor to six-year terms.

The GMHBs have limited jurisdiction and may only hear and determine petitions alleging:

- that a state agency or planning jurisdiction is non-compliant with the GMA, specific provisions of the Shoreline Management Act, or certain mandates of the State Environmental Policy Act relating to qualifying plans, regulations, or amendments; or
- that the 20-year planning population projections adopted by the Office of Financial Management should be adjusted.

The GMHBs must make findings of fact and prepare a written decision in each decided case. Findings of fact and decisions become effective upon being signed by two or more members and upon being filed at the applicable GMHB office. Final decisions of the GMHBs may be appealed to the superior court.

The GMHBs are governed by statutory requirements for conduct and procedure. For example, a majority of a GMHB constitutes a quorum for making decisions, adopting rules, and conducting other official business.

Joint Legislative Audit and Review Committee.

The Joint Legislative Audit and Review Committee (JLARC) conducts performance audits, program evaluations, sunset reviews, and other analyses. Assignments to conduct studies are made by the Legislature and the JLARC. The JLARC's non-partisan staff auditors independently seek answers to audit questions and issue recommendations to improve performance. The JLARC is comprised of an equal number of House of Representatives and Senate members, Democrats and Republicans.

## **Summary of Engrossed Substitute Bill:**

### Administration and Operations of Growth Management Hearings Boards.

The Office of Growth Management Hearings Boards (OGMHB) is created. The OGMHB consists of the three regional GMHBs established in the GMA. The administrative offices of each GMHB must only be located in the OGMHB. The office of the Western Washington GHMB is the initial location of the OGMHB. Provisions for the transfer of operations, assets, employees, and obligations from the three GMHBs to the OGMHB are specified.

If, due to vacancy, disqualification, illness, injury, workload imbalances, or budgetary constraints, only two members of a GMHB are available to render a decision on a case, the two remaining members may select a member from a different GMHB to substitute for the unavailable member and render a decision in the case. In selecting a substitute member, the GMHB must attempt to maintain the applicable requirements governing the composition of GMHBs. Requirements pertaining to findings of fact and decisions are modified to specify that such findings and decisions must, in addition to other requirements, be signed by two or more GMHB members who participated in deciding the matter.

### Joint Legislative Audit and Review Committee.

The Joint Legislative Audit and Review Committee (JLARC) must examine the administration and operations of the GMHBs or any successor agency, subject to the availability of amounts appropriated for this specific purpose. The examination must include an evaluation of:

- how to improve the effectiveness of the GMA dispute resolution system;
- the GMHBs organizational structure, workload, and work processes;
- potential benefits associated with establishing three-member regional panels;
- potential opportunities to co-locate or become part of the Environmental Hearings Office;
- technological opportunities to improve efficiency and decrease travel expenses; and
- additional methods of improving compliance with the GMA that may reduce costs to all parties.

The JLARC is required to report its findings and recommendations to the Governor and the appropriate committees of the House of Representatives and the Senate by December 1, 2009.

## **EFFECT OF SENATE AMENDMENT(S):**

The Senate amendment removes language in section 6 that directs JLARC to examine additional methods of improving compliance with the GMA that may reduce costs to all parties, and replaces it with language that directs JLARC to examine the costs and benefits of complying with the GMA, including the full costs to local governments of defending appeals and their success rate.

**Appropriation:** None.

**Fiscal Note:** Preliminary fiscal note available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed, except sections 1 and 2, relating to authorizing members of a GMHB to substitute for an unavailable member to render a case decision, which take effect immediately, and section 3, 4, and 5, relating to the establishment and operations of the OGMHB, which take July 1, 2009.

**Staff Summary of Public Testimony:**

(In support) This bill would consolidate the Growth Management Hearings Board (GMHB) administration into one office. There are currently three boards, with three separate regional offices. Under this bill the boards will continue to operate regionally as they've done in the past. The current house committee budget reductions in the GMHB, are too high which leaves the GMHB with only one option: reduce the number of board members. This will decrease the amount of land use hearings that this agency will be able to conduct. Sections 1 and 2 should become effective immediately, and the rest of the bill should be effective beginning July 1, 2009, since two of the regional offices will need to be vacated. This bill will enable the GMHB to take advantage of new technology for administrative filings. The GMHB provides an alternative to costly superior court hearings, and saves money for the state and local jurisdictions. This bill takes a practical approach to gain administrative budget savings. It is important that the current regional system that enables regional variation is retained. This bill is a much better option than the Senate's version.

(Opposed) None.

**Persons Testifying:** Ed McGuire, Growth Management Hearings Board - Central Washington; April Putney, Futurewise; Nina Carter, Growth Management Hearings Board - Western Washington; Raymond Paollella, Growth Management Hearings Board - Eastern Washington; Josh Weiss, Washington State Association of Counties; and Dave Williams, Association of Washington Cities.

**Persons Signed In To Testify But Not Testifying:** None.